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Committee on Sanitary and Phytosanitary Measures

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**COMMENTS ON THE PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL ON NOVEL FOODS (DOCUMENT G/SPS/N/EU/64)**

COMMUNICATION FROM PERU

The following communication, received on 25 February 2015, is being circulated at the request of the delegation of Peru.

1 As regards the trade concern arising from the proposed regulation of the European Union repealing Regulation (EC) No. 258/97 on Novel Foods, which was notified to this Committee in document G/SPS/N/EU/64 and addenda thereto, Peru would like to reiterate some of the issues raised earlier, which remain a source of concern for the various Peruvian actors involved in the export of traditional biodiversity products, whose production and trade are being encouraged under Peruvian State policy.

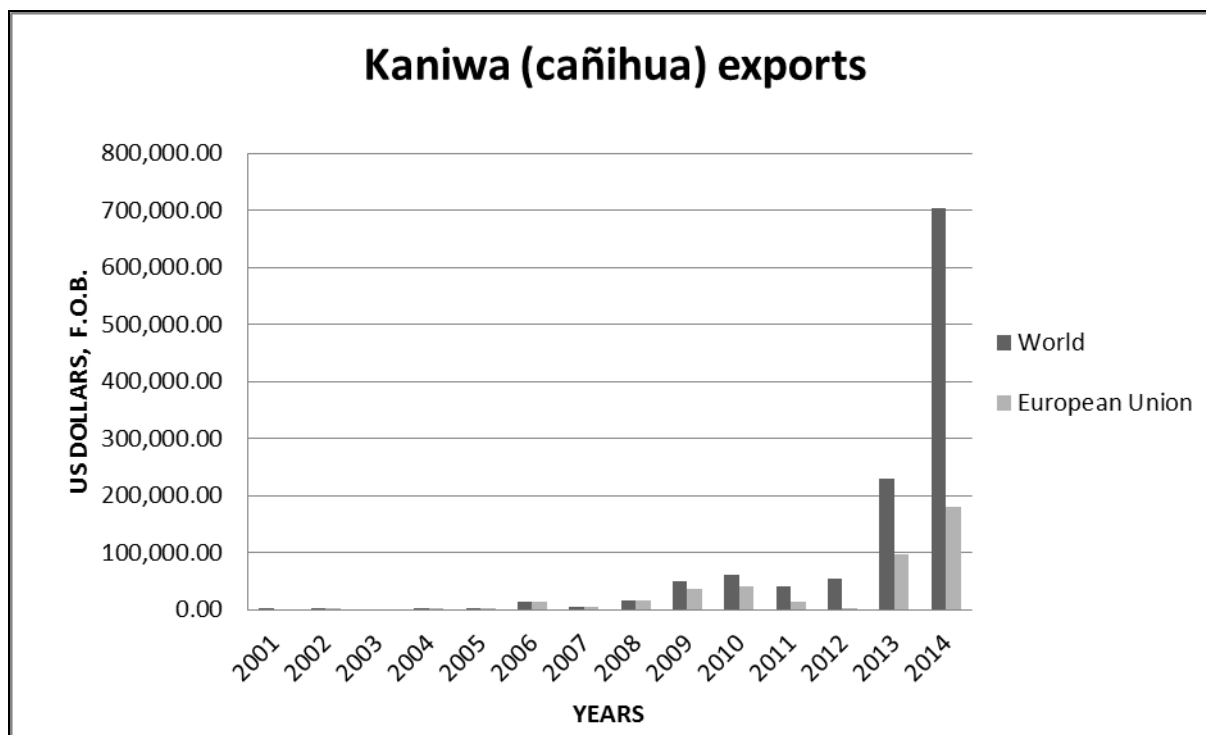
2 The proposed Regulation appears to be inconsistent with Article 5.1 and 5.2 (Assessment of Risk and Determination of the Appropriate Level of Sanitary or Phytosanitary Protection) and with Article 2.2 (Basic Rights and Obligations) of the Agreement on the Application of Sanitary and Phytosanitary Measures. Indeed, the ban placed on the marketing of novel foods is not based on a risk assessment by the European Union that provides the scientific grounds necessary to justify application of the restrictive measure, but on the applicant's difficulty in producing evidence of the safety of the product it seeks to market within the Union, even though some of the foods in question are already being marketed in other WTO Member countries. Peru accordingly requests that the European Union explain how the proposed Regulation would be consistent with Articles 5.1, 5.2 and 2.2 of the SPS Agreement, under which Members are required to base their sanitary or phytosanitary measures on a risk assessment.

3 The proposed Regulation also appears to be inconsistent with Article 5.6 of the SPS Agreement. Indeed, it involves a degree of trade restriction greater than that required to achieve an appropriate level of sanitary or phytosanitary protection, compared to other WTO Members' legislation dealing with the same subject but whose procedures involve fewer restrictions.¹

4 It should be emphasized that Peru's high-potential traditional products derived from biodiversity are being affected by the European Union's current Regulation on Novel Foods. For example, the table below shows Peru's global exports of kaniwa² (or cañihua (*Chenopodium pallidicaule*)), which increased by more than 317% in 2013 and about 206% in 2014 and went to markets such as Australia, Canada and the United States. Kaniwa obviously has a long history of safe consumption and is hence widely accepted in the international market. Nonetheless, the marketing of this food in the European market is restricted and its real potential cannot be exploited.

¹ Examples of such legislation are the People's Republic of China's *Administrative Measures for Safety Review of New Food Materials* and Canada's *Division 28 of Part B of the Food and Drug Regulations*.

² Kaniwa (or cañihua) is an Andean cereal with a high nutritional value, containing twice as much protein as foods such as wheat, rice and oats. It is native of the Peruvian Altiplano and is produced mainly in the Puno region to the north of Lake Titicaca.



Source: Promperú.

5 Without prejudice to the issues raised earlier, Peru also requests the European Union to clarify the scope of the phrase "a large part of the population of a third country", contained in Article 2.2(c) (Definitions). The definition does not specify the percentage or number of people required for this part of the population to be considered "large", nor does it specify whether the population in question should constitute a representative sample of the country's population as a whole or whether it may concern specific areas.

6 In conclusion, Peru hopes that the European Union will be able to settle the concerns that have arisen in connection with the proposed Regulation over the years spent discussing this topic in the Committee, because it represents a potential obstacle to real and effective access for traditional biodiversity products to the European market. We thank the European Union for its flexibility in addressing the concerns expressed.